Supreme Court, U.S.
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No. 94-1152

In The

Supreme Court of the United States

October Term, 1994

AJIT SINGH,

Petitioner,

-against-

WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA; FAFCO, INC., insured by GENERAL ACCIDENT INSURANCE COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of California

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

KEVAN SHETLER, ESQ.
Attorney for Respondents
Law Offices of Kevan Shetler
1602 The Alameda, Suite 102
San Jose, California 95126
Telephone No: [408] 993-9600

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Should a decision of the Workers' Compensation Appeals Board be upheld where its decision is based on uncontradicted medical reports of an Agreed Medical Examiner?

LIST OF PARTIES

The parties to the proceeding are those listed in the caption.

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QUESTIONS BELOW

The basic decision involved in the Petition for Writ of Certiorari is the February 18, 1994, Findings, Award and Order of the Workers' Compensation Appeals Board of the State of California, annexed to this Brief in Opposition in Appendix A, beginning at page App. 1. The May 5, 1994, Order of the Workers' Compensation Appeals Board denying reconsideration appears at Appendix B. The July 20, 1994, Order of the Court of Appeal, First Appellate District, denying Petition for Writ of Review appears at Appendix C. The September 18, 1994 Order of the California Supreme Court In Bank denying Petition for Review appears at Appendix D.

JURISDICTION

Petitioner has alleged that the jurisdiction of this Court arises under 28 U.S.C. Section 1254(1). This Section governs the routing of cases from the Federal Courts of Appeals to this Court. This case has not as yet been heard in any Federal Court. The last decision in this case was by the California Supreme Court. Thus, Petitioner has not shown how this Court may take jurisdiction. In fact, there are no grounds in this case by which the jurisdiction of this Court may be invoked, as no federal questions were raised or passed upon in state court.

STATEMENT OF THE CASE

On April 14, 1993, while Petitioner AJIT SINGH was represented by counsel, a pretrial conference was held at which stipulations were taken. Counsel stipulated that Petitioner, a machine operator born November 15, 1964, while employed by FAFCO, INC., insured by GENERAL ACCIDENT INSURANCE COMPANY, on June 4, 1990, sustained compensable injury to his back.

On February 18, 1994, following a Trial of the issues, Workers' Compensation Judge Alvin Barrett issued a Findings, Award and Order, which determined that Petitioner's June 4, 1990 injury to his back resulted in no permanent disability and no temporary disability beyond June 19, 1992. Judge Barrett relied on the medical reports of Agreed Medical Examiner, Dr. Steven Feinberg.

By his Report and Recommendation on Reconsideration, Judge Barrett recommended that the Petition for Reconsideration be denied without further proceedings. The Workers' Compensation Appeals Board issued an Order Denying Reconsideration on May 5, 1994, consistent with the Findings, Award and Order of the Workers' Compensation Judge.

On June 14, 1994, Petitioner timely filed a Petition for Writ of Review in the Court of Appeal, First Appellate District. On July 20, 1994, the Court of Appeal denied the Petition without opinion.

Petitioner timely filed a Petition for Review in the California Supreme Court. On September 28, 1994, the Supreme Court In Bank denied the Petition for Review without opinion.

No federal questions were raised or passed upon in the state court.

REASONS FOR DENIAL OF THE WRIT

A. THIS CASE INVOLVES A SETTLED QUESTION OF CALIFORNIA LAW WHICH DOES NOT INVOLVE, NOR CAN IT BE MADE TO INVOLVE, AN ISSUE ARISING UNDER FEDERAL LAW OR THE FEDERAL CONSTITUTION.

This case involves a settled question of California law, that is, whether uncontradicted medical reports of an Agreed Medical Examiner constitute substantial evidence to support the Workers' Compensation Appeals Board's February 18, 1994 Findings, Award and Order.

The California Labor Code requires the appellate court to uphold findings on questions of fact made by the Workers' Compensation Appeals Board so long as they are supported by substantial evidence. Labor Code §§ 5952(d), 5953; *LeVesque v. Workers' Compensation Appeals Board* (1970) 1 Cal.3d 627, 637 [83 Cal.Rptr. 208]. Findings within the realm of what a reasonable trier of fact could find are supported by substantial evidence. *Insurance Co. of N. America v. Workers' Compensation Appeals Board (Kemp)* (1981) 122 Cal.App.3d 905, 911 [176 Cal.Rptr. 365].

Here, the Workers' Compensation Appeals Board's decision, and the subsequent decisions of the Court of Appeal and Supreme Court are supported by substantial evidence. The Findings, Award and Order issued February 18, 1994 denying permanent disability and temporary

disability beyond June 19, 1992, was based on reports of the Agreed Medical Examiner. An Agreed Medical Examiner is utilized when the parties are in disagreement as to the extent of permanent disability or regarding the need for continuing medical care. Labor Code § 4061(c).

Petitioner does not demonstrate why the Agreed Medical Examiner's reports are unreliable, nor does he present contradictory evidence to refute the Agreed Medical Examiner's opinion regarding the nature of his back injuries.

At each level of appeal, Petitioner has attempted to submit new or additional medical records for consideration by the court. However, judicial review is confined to the record before the Workers' Compensation Appeals Board at the time of issuance of the order, decision or award. *Union Lumber Co. v. Industrial Accident Comm'n (Thornquist)* (1936) 12 Cal.App.2d 588, 594 [55 P.2d 911]. The subject medical records were not previously filed with the Workers' Compensation Appeals Board, nor were they entered into the record as evidence prior to the issuance of the Findings, Award and Order in question. Most important, the Findings, Award and Order that is the subject of these petitions pertains to Petitioner's back injury, while the medical records pertain to alleged injuries to his right knee.

Even if the additional medical records were considered part of the petitions, the fact remains that the parties agreed to use an Agreed Medical Examiner to make medical determinations. Again, Petitioner does not demonstrate why the determinations of the Agreed Medical Examiner should not be relied upon.

Furthermore, a review on writ of certiorari is not a matter of right, but of judicial discretion. Thus, such a petition will be granted only when there are special and important reasons therefor. The character of reasons that will be considered are described in Supreme Court Rules, Rule 10. Though not controlling or fully measuring the Court's discretion, the character of reasons that will be considered are delineated in the Rule and are as follows:

> a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision;
>
> b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by the Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Mr. Singh's Petition simply does not involve such federal questions.

CONCLUSION

This case involves a settled question of California law, fairly adjudicated in the trial court. No federal questions are presented by the present Petition, nor is the infringement of Federal constitutional rights alleged.

> A litigant has no statutory right whatsoever to obtain from the Supreme Court a decision on the merits of his case. The petitioner must seek to persuade the Supreme Court that, either because of the importance of the question presented, or because of a conflict in decisions, or some other reason, sufficient grounds exist for the court in its discretion to grant certiorari and determine the case on its merits. 1 Boskey, *West's Federal Forms* (4th ed. 1992) § 41.

Mr. Singh's Petition for Writ of Certiorari is merely an attempt to obtain from the Supreme Court a decision on the merits of his case. The Petitioner exhausted his means for appeal when he filed a Petition for Review with the California Supreme Court, which was denied without opinion on September 28, 1994.

Accordingly, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Dated, San Jose, California, January 17, 1995.

Respectfully submitted,

Law Offices Of Kevan Shetler

KEVAN SHETLER
Attorney for Respondents

APPENDIX

APPENDIX A

WORKERS' COMPENSATION APPEALS BOARD STATE OF CALIFORNIA

AJIT SINGH, *Applicant,* *v.* FAFCO, INC., and GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA, *Defendant.*	**Case No. SFO 0353170** **FINDINGS, AWARD AND ORDER**

The above-entitled matter having been heard by and submitted for decision to Alvin R. Barrett, Workers' Compensation Judge, said Judge now makes his decision as follows:

FINDINGS OF FACT

1. Ajit Sing, born November 15, 1964, while employed as a machine operator at Redwood City, California, on June 4, 1990 by Fafco, then insured for workers' compensation liability by General Accident of America, sustained injury arising out of and occurring in the course of his employment to his back.

2. The stipulations in the Minutes of Hearing of April 14, 1993 are true and are incorporated herein by reference.

3. Applicant's earnings at the time of injury were sufficient to produce a temporary disability rate of $185.87.

4. This injury caused temporary disability to and including June 19, 1992, entitling applicant to temporary disability indemnity at the rate of $185.87 per week, less credit to defendants for all sums heretofore paid on account thereof, if any.

5. This injury caused no permanent disability.

6. Employment Development Department did not furnish benefits during temporary disability.

7. Applicant will not require further medical treatment to cure or relieve from the effects of this injury.

8. Applicant is entitled to reimbursement of self-procured medical treatment incurred before June 9, 1992, in an unknown amount to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.

9. Applicant is entitled to reimbursement of medical-legal costs in an unknown amount incurred before June 9, 1992, to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.

10. There is insufficient evidence to justify restitution.

11. A reasonable attorneys' fee is not allowable.

AWARD

AWARD IS MADE in favor of AJIT SINGH, against GENERAL ACCIDENT OF AMERICA, of:

(a) Temporary disability indemnity to and including June 19, 1992 entitling applicant to temporary disability indemnity at the rate of $185.87 per week, less credit to defendants for all sums heretofore paid on account thereof, if any.

(b) Reimbursement of self-procured medical treatment in an unknown amount to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.

(c) Reimbursement of medical-legal costs in an unknown amount to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.

ORDER

IT IS ORDERED the lien of Employment Development be, and it is hereby, DISALLOWED.

/s/ Alvin R. Barrett
ALVIN R. BARRETT
Workers' Compensation Judge

Filed and Served by mail on:
FEB 18 1994
On all parties listed on Official Address Record.
/s/ Diofe G. Carbonel
By: Diofe G. Carbonel

AJIT SINGH,

ALVIN R. BARRETT, JUDGE

v. FAFCO, INC., and GENERAL ACCIDENT INSURANCE OF AMERICA

Case No. SFO 0353170

OPINION ON DECISION

The legal opinion of a medical expert witness is not substantial evidence to justify restitution. However, the opinion does demonstrate that there was no compensable temporary disability beyond the date for which indemnity had already been paid. Accordingly, the finding is made that the admitted injury did not cause additional temporary disability beyond the ending date of temporary disability indemnity reflected in the minutes of April 14, 1993. Therefore, Employment Development Department did not pay unemployment compensation disability concurrently with temporary disability, and the lien is disallowed.

Based upon Dr. Feinberg's opinions, applicant is not entitled to medical care or reimbursement of medical-legal expense beyond the date of the doctor's deposition. There are no funds from which to allow an attorney fee. The lien claim of Dr. Graham is allowed in an amount to be adjusted for services furnished in 1991 *only*. The lien of

Dr. Brown is disallowed as unnecessary in light of Dr. Feinberg's opinion.

/s/ Alvin R. Barrett
ALVIN R. BARRETT, Judge
Workers' Compensation
Appeals Board

ARB:dc
SINGH, A.

APPENDIX B

WORKERS' COMPENSATION APPEALS BOARD STATE OF CALIFORNIA

AJIT SINGH, *Applicant,* *vs.* FAFCO, INC., and GENERAL ACCIDENT INSURANCE CO. OF AMERICA, *Defendants.*	**Case Nos.** **SFO 0360657** **SFO 0353170** **ORDER DENYING RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in said report which we adopt and incorporate, we will deny reconsideration.

We are, moreover, extending to the WCJ's finding on credibility the great weight to which it is entitled (see *Garza v. Workers' Comp. Appeals Bd.* (1970) 3 Cal. 3d 312, 35 Cal. Comp. Cases 500).

For the foregoing reasons,

IT IS ORDERED that said Petition for Reconsideration be, and it hereby is, **DENIED.**

WORKERS' COMPENSATION
APPEALS BOARD

/s/ D.J. HANNIGAN **Deputy**

I CONCUR,

/s/ RICHARD P. GANNON
CONCURRING BUT NOT SIGNING
Arlene Heath [SEAL]
DATED AND FILED IN SAN FRANCISCO,
CALIFORNIA MAY 5 1994
SERVICE BY MAIL ON SAID DATE TO ALL PARTIES
LISTED ON THE OFFICIAL ADDRESS RECORD,
EXCEPT LIEN CLAIMANTS
vsr /s/ CONCHITA L. LAGE

APPENDIX C

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION: 4

SINGH, AJIT (Filed Jul. 20, 1994)
vs.
WCAB,
GENERAL INSURANCE CO.,
A066096
San Francisco County No. SF00360657

BY THE COURT:

The petition for writ of review is denied.

The justices participating in this matter were:

Anderson, P.J. ✓ Poche, J. _ Perley, J. ✓ Reardon, J. ✓

Dated: JULY 20 1994

ANDERSON P.J. P.J.

APPENDIX D

First Appellate District, Division Four, No. A066096
S041245

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

(Filed Sept. 28, 1994)

AJIT SINGH, Petitioner

v.

WORKERS' COMPENSATION APPEALS
BOARD, Respondent

GENERAL INSURANCE COMPANY OF AMERICA

Petition for review DENIED.

/s/ LUCAS
Chief Justice